

Citation: *R. v. Melew*, 2021 YKTC 30

Date: 20210721
Docket: 20-00195
20-00195A
20-00195C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Gill

REGINA

v.

YONIS SHEMSEDIN MELEW

Appearances:
Leo Lane
Gregory Johannson

Counsel for the Crown
Counsel for the Defence

RULING ON APPLICATION

[1] GILL J. (Oral): This is an application pursuant to s. 486.2 by the Crown, seeking that Guy Coderre, a witness in these proceedings, be permitted to testify by way of audio and video as opposed to his personal attendance in the courtroom. The reason given is that the witness maintains his ability to testify completely and accurately would be adversely affected by virtue of his having to testify in the physical presence of the accused. In support of that, there has been filed an affidavit of a police officer, as well as Mr. Coderre himself providing *viva voce* testimony by video.

[2] The affidavit of Cst. Savill reveals a number of postings that the accused is alleged to have authored indicating certainly a degree of animosity, to put it mildly,

against Mr. Coderre, who is described as racist, who is alleged to be writing bogus affidavits, and who is said, "will be brought to justice and cross-examined vigorously making him sweat like a pig."

[3] Photographs are appended to some of those postings in some fashion attempting to connect those to Mr. Coderre's location, but without any real purpose explicitly set out for doing that.

[4] Another posting describes Mr. Coderre as, "if he lies like racists as usual he will be charged with perjury ... black men are coming to court to watch the trial ... the media will be there to report."

[5] All of this is not in connection with these proceedings but, rather, with a bail review application that was being brought by Mr. Melew. The Crown contends that the same sentiments can be applied to the present proceedings, at least in the mind of Mr. Coderre who is afraid to testify in front of Mr. Melew because, firstly, as I have already alluded, his concern that he will not be able to testify completely and accurately; and secondly, that the reason for that is that when Mr. Melew is in his physical presence, in the past, this has elicited in Mr. Coderre a feeling of high anxiety, panic, shortening of breath, increased heart rate, and a general sense of insecurity.

[6] One has to look, I think, at the underlying facts that are said to be contributing to that state on the part of Mr. Coderre. The two of them worked together, Mr. Coderre and the accused, for a period of time with Mr. Coderre in a supervisory role. That was a high conflict situation, where Mr. Coderre testified today that he did have some concerns about Mr. Melew potentially impacting his own career prospects. He did not,

during the time they worked together, have any concerns for his personal safety.

Nonetheless, I accept that that did trigger in Mr. Coderre some anxiety, even if only for his career prospects.

[7] That changed, Mr. Coderre says, later on mainly, if not exclusively, as a result of a single day on which he encountered Mr. Melew on two occasions, after a long period of time of not seeing Mr. Melew. He encountered him in town and Mr. Melew came up to him in a hasty fashion and began to yell and swear at him, as Mr. Coderre described it, “screaming in my face”. The second time, on the same day, Mr. Melew is said to have left his car and run towards Mr. Coderre, again screaming and swearing.

[8] Mr. Coderre does not allege at any time that Mr. Melew said anything to indicate that he would physically harm Mr. Coderre, and he agreed that there has never been a specific threat, on the part of Mr. Melew against Mr. Coderre, that he would retaliate for any testimony that Mr. Coderre might provide in these proceedings. As Mr. Coderre said, it was basically unpleasant Facebook posts about him and then the two incidents on the same day.

[9] Mr. Coderre himself is an adult male. He has served in the military. He is currently, as a result of these proceedings, on a, I gather, a partial Workers' Compensation claim — working reduced hours, taking some counselling — but beyond that I do not have any evidence before me in the way of medical opinion evidence indicating any particular diagnosis in terms of a mental health condition that either has been caused, or may be exacerbated, by Mr. Melew, or Mr. Coderre being in the presence of Mr. Melew.

[10] I would just add that these courts routinely deal with matters that involve witnesses being frightened, or perhaps even intimidated, by the person that they are accusing, but the courts are here in a public forum, in a public setting, for witnesses to testify. To allow that process by video is clearly not the norm; it is the exception. There are many instances far more serious than on these facts before me where witnesses are expected to, and do, in fact, testify in person. I am just not satisfied, on the basis of the information that I have at hand, that Mr. Coderre qualifies under any of the subcategories of s. 486.2(3) on a balance of probabilities demonstrating that his testimony by video is warranted.

[11] I would just add that — and this may not be necessary, but I think it is prudent — I have not seen anything on the part of Mr. Melew thus far in these proceedings where he can be said to be making any gestures or responses to testimony to the witnesses who have testified thus far that would give me cause for concern. If that should change, then I will be the first to want to address that in some fashion to ensure that Mr. Coderre is able to testify fully and frankly without fear of any sort on the part of Mr. Melew. As I say, there is no basis for me to have that concern but I think it is important that I set that out on the basis of what Mr. Melew has written about Mr. Coderre.

[12] [DISCUSSIONS]

[13] The application is dismissed.

GILL T.C.J.